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Via E-mail & First Class Mail

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Grand Rapids District Office
Department of Environmental Quality
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Re: Deficiencies in Wolverine's Investigation and Response Activities.

Dear Mr. Kimble, Mr. O'Donnell, and Mr. Kaplan:

As you may know, our law firm represents hundreds of residents impacted by groundwater contamination emanating from Wolverine World Wide Inc.'s ("Wolverine") former disposal area at 1885 House Street (the "House Street Disposal Site") along with several other suspected unlicensed disposal areas in the vicinity. The contamination has caused diminution in residents' property values, medical issues, anxiety, stress, and numerous other costs and damages. We are encouraged that both the Michigan Department of Environmental Quality (the "MDEQ") and the United States Environmental Protection Agency (the "EPA") initiated actions against Wolverine to compel environmental investigation and response activities.¹ Because our clients have significant interests in proper investigation of the contaminated sites to protect their health and surrounding environment, we are writing to provide comments and additional information in response to Wolverine's current investigation and clean-up plans.

¹ The Complaint filed against Wolverine by the MDEQ in the United States District Court for the Western District of Michigan (Case #1:18-CV-00039) and the Unilateral Administrative Order for Removal Actions issued by the EPA to Wolverine (CERCLA Docket No. V-W-18-C-004).

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I. Technical Commentary: Several Deficiencies Exist In Wolverine's Current Plans.

Enclosed as **Exhibit A** is a copy of a Technical Memorandum prepared by Mick Lynch of American Hydrogeology Corporation (AHC). Mick Lynch is a well-respected environmental consultant with over thirty-seven (37) years of experience in conducting systematic delineation of soil and groundwater contamination at contaminated properties. As you may be aware, to date, Wolverine has provided only cursory information of the environmental conditions at former disposal sites. The Technical Memorandum contains preliminary comments based on a review of the limited information that is currently available for review by AHC.

The Technical Memorandum identifies several deficiencies in Wolverine's currently proposed plans. We respectfully request that both agencies consider the comments and analysis set forth in the Technical Memorandum in analyzing any work plans to be submitted by Wolverine and its consultants.

II. Analytical Sampling Data Shows a Need for a More Robust Investigation and Monitoring Program.

We are also providing a copy of the analytical results from sampling performed by Fishbeck, Thompson, Carr & Huber, including the following samples: (1) soil samples from an adjacent property (south of the House Street Disposal Site) currently owned by the Michigan Department of Transportation (the "MDOT" Site), attached as **Exhibit B**; (2) soil samples from private property located along Imperial Pine Street, located to the west of the House Street Disposal Site (the "Imperial Pine Site"), attached as **Exhibit C**; and (3) groundwater samples from residential wells located in the vicinity of the House Street Disposal Site, attached as **Exhibit D**.

The above-referenced sampling data must be considered in the ongoing environmental investigation for several reasons:

A. Other Sites Must Be The Subject of Enforcement.

As evidenced by the sampling data above, Wolverine disposed of waste materials containing hazardous substances at locations beyond the boundaries of the House Street Disposal Area. As a result, any investigation of contamination caused by Wolverine should include an investigation of other illicit or unlicensed disposal sites in the vicinity of the House Street Disposal Site. The sites should include—at a minimum—the MDOT Site, the Imperial Pine Site, the dumping site(s) on or around the intersection of Jewell Ave. NE & 11 Mile Rd. NE, and the dumping site(s) on the east side of U.S. Highway 131 between 10 Mile Rd. NE and 11 Mile Rd. NE.

B. Wolverine Has Failed to Thoroughly Characterize Waste.

Wolverine removed waste materials from the MDOT Site and the Imperial Pine Site before adequate sampling had been performed to identify and delineate the entire contamination that may have been present, much less the concentrations or distribution of such contaminants.

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Only limited sampling was performed to characterize waste materials for disposal. More thorough sampling of source areas prior to removal would have assisted in the development of a sampling plan to determine which contaminants may have migrated away from the site in groundwater.

This mistake should not be repeated. Before any additional removal activities are undertaken at the House Street Disposal Site or other surrounding unlicensed disposal areas, all source areas should be properly characterized and delineated (for PFAS and all other contaminants of concern).

C. Residential Wells Must Be Monitored For All Hazardous Substances Present, Not Just PFAS.

The sampling data establishes the presence of hazardous substances (other than PFAS) substantially above applicable cleanup criteria at the unlicensed disposal sites, including total chromium, hexavalent chromium, arsenic, mercury, selenium, lead, and zinc. It also shows that at least one home has already tested positive for the presence of lead at concentrations substantially above federal and state criteria for drinking water. Similar hazardous substances (and possibly other chemicals) undoubtedly are present at the House Street Disposal Site at similar or even higher concentrations, along with being present at Wolverine's other unlicensed dump sites in the vicinity.

Based on that data, monitoring of residential drinking wells should be expanded to address any and all contaminants identified at the MDOT Site, Imperial Pine Site, House Street Disposal Site, and other unlicensed disposal sites in the area. Such monitoring is necessary to protect our clients' and the public's health.

D. Residential Drinking Water Must Be Regularly Monitored.

A significant number of residential wells have been impacted by PFAS. Wolverine has taken only one PFAS water sample for some households. The MDEQ routinely requires quarterly sampling of groundwater in conjunction with required environmental response activities. The purpose of such quarterly sampling is presumably to account for fluctuations in contaminant concentrations (due to seasonal groundwater level changes, variability in concentrations of contamination that may be migrating from a source area, analytical errors, *etc.*). In fact, in January 2018, the second set of tests from several homes near the House Street Disposal Site tested positive for PFAS after originally testing negative. As a result, it is clear that a single isolated test is not adequate to determine that a residential drinking well has not been impacted by contamination.

A more thorough and comprehensive sampling procedure is warranted to avoid the risk that inadequate sampling failed to identify PFAS contamination that may have gone undetected in the initial round of residential well sampling. At the very least, all residential wells in the relevant testing areas should be re-sampled and analyzed on a quarterly basis. In the event a sampling protocol has already been established and submitted to the MDEQ or EPA, then we request a copy of that protocol for our clients' review.

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III. PFAS should be included in a Hazard Ranking System Evaluation for National Priorities List.

The EPA's Unilateral Administrative Order for Removal Actions does not specifically address PFAS contamination, focusing instead on other "hazardous substances" under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). However, the EPA should consider the impact of PFAS (including PFOA) in any evaluation of the site(s) under the EPA's Hazardous Ranking System ("HRS"), which is utilized by the agency to determine whether a site should be placed on the National Priorities List ("NPL"). The EPA has previously considered PFAS contamination in conducting a HRS evaluation at the Saint Gobain Performance Plastics Superfund Site. See Support Document for the Revised National Priorities List Final Rule – Saint-Gobain Performance Plastics (July 2017), **Exhibit E**.

The EPA Support Document attached explains why PFOA was utilized for the purposes of a HRS evaluation:

PFOA was correctly identified as qualifying as a CERCLA pollutant or contaminant at the SGPP site, not a CERCLA hazardous substance, and, therefore, can be considered in the HRS site evaluation, as explained below. Furthermore, there is no requirement that a drinking water standard must be promulgated for a substance for it to be included in an HRS evaluation, only that it meet the CERCLA definition of a pollutant or contaminant.

CERCLA Section 101(33) defines "pollutant or contaminant" as including but not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

Hazardous substances are defined for HRS purposes in HRS Section 1.1, *Definitions*, as, CERCLA hazardous substances, pollutants, and contaminants as defined in CERCLA sections 101(14) and 101(33), except where otherwise specifically noted in the HRS. [55 FR 51586, December 14, 1990].

Therefore, while a substance may not be a CERCLA hazardous substance, it can be considered a HRS hazardous substance because the HRS defines pollutants and contaminants to be HRS hazardous substances.

PFOA can be considered a pollutant or contaminant at this site because it is at a concentration at the Site that could cause increase total cholesterol, thyroid disease, decreased response to vaccines, and pregnancy-related hypertension or preeclampsia (pages 241 to 242, 253 to 257 of Reference 13, *Health Effects*

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Support Document for Perfluorooctanoic Acid (PFOA) (EPA, 2016)). PFOA is clearly in the release from the SGPP facility. It was found in quantifiable levels in 2 of the 3 drinking water wells evaluated in the scoring of the Site. The PFOA concentration in a sample from PSW 7 was found to be 520 ng/L (0.52 µg/L), and the PFOA concentration in a sample from PSW 3 was found to be 140 ng/L (0.14 µg/L). PFOA has also been documented in monitoring wells at the Site at concentrations ranging from 570 ng/L to 18,000 ng/L (0.57µg/L to 18 µg/L) (pages 41 – 43 of the HRS documentation record at proposal).

See Support Document for the Revised National Priorities List Final Rule – Saint-Gobain Performance Plastics at 14-15 (emphasis added).

Based on the foregoing, as the EPA has done previously, PFAS/PFOA contamination should be considered for purposes of conducting a complete HRS evaluation of the site by the U.S. EPA.

IV. Promulgation of Part 201 Criteria for PFAS/PFOA.

The MDEQ recently announced that it has adopted regulations establishing drinking water criteria for perfluorooctanoic acid (PFOA) [CAS # 335-67-1] and perfluorooctanesulfonic acid (PFOS) [CAS # 1763-23-1] effective January 10, 2018. See 1/09/2018 DEQ Press Release, **Exhibit F**. The residential and nonresidential drinking water criteria are 0.07 µg/L (70 parts per trillion) for the combined concentrations of PFOA and PFOS. The timing of the rule promulgation is puzzling, as the PFOS/PFOA criteria were part of a proposed rules package that was reportedly subject to public comment through January 24, 2018 (which has since been extended to February 7, 2018). Yet, the rule in question was reportedly effective on January 10, 2018—fourteen days before the public comment period ended. Although we are encouraged that the MDEQ is working to establish Part 201 criteria for PFOS/PFOA contamination, we are concerned that the new rule has been published without a full opportunity for public comment and without a thorough consideration of all relevant factors.

According to the MDEQ press release, the PFOS/PFOA criteria of 0.07 µg/L for drinking water was established by reference to "health advisory values as presented in the United States Environmental Protection Agency Drinking Water Health Advisories for Perfluorooctanoic Acid (PFOA), EPA 822-R-16-005, May 2016 and Perfluorooctane Sulfonate (PFOS), EPA 822-R-16-004, May 2016." It is unclear why the DEQ did not use the algorithms in the Michigan Administrative Code Rule 299.10 or the toxicological or chemical-physical data of Rule 299.50, consistent with provisions of Rule 299.6, Rule 299.10(3), and Rule 299.34. We believe that additional consideration should be given to the target criteria for PFOS and PFOA, especially in light of the fact that other states have adopted more stringent criteria. For example, Vermont's limit for PFOS/PFOA is 20 parts per trillion and New Jersey's limit for PFOA is 14 parts per trillion and 13 parts per trillion for PFNA. Other states are considering regulation of additional types of PFAS as well.

Without further consideration of appropriate criteria for PFOS/PFOA and by short-circuiting the public-comment period, we are concerned that the newly adopted Part 201 drinking

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water standard of 0.07 µg/L for drinking water may not be adequately protective for either short-term or chronic exposures.

V. Due Care Obligations

Part 201 imposes "due care" obligations on the owner/operator of a "facility" (such as the House Street Disposal Site or the Wolverine Tannery site). See MCL 324.20107a. Such due care obligations include a duty to undertake "response activity necessary to mitigate unacceptable exposure to hazardous substances." See MCL 324.20107a(1)(b). As you might expect, our clients are very concerned about the "due care" measures that will be implemented to mitigate unacceptable exposures to hazardous substances (including PFOS/PFOA and other hazardous substances emanating from the source area(s)).

The lack of transparency from Wolverine has prevented us from fully addressing all of Wolverine's due care obligations, but Wolverine is clearly not undertaking all appropriate due care obligations, as demonstrated by the following two examples:

- As explained above, all potentially impacted wells should be tested for all hazardous substances that may be present. Wolverine knows what was in its tannery waste. As confirmed by the testing, hazardous substances clearly exist at levels that could leach into groundwater. Due care necessarily includes residential well testing for these other substances.
- In certain investigation areas, Wolverine is refusing to provide water filters to households on the basis of a single "non-detect" water sample. This is true even where neighboring properties test positive for contaminants. As discussed above and in the AHC Technical Memorandum, contaminant levels in groundwater can fluctuate and the plume of contamination can move. Until adequate sampling has been performed to establish PFAS concentration levels over an extended period of time for each residential property, Wolverine should be required to provide water filtration systems to all homes that could even potentially be or become contaminated.

Furthermore, the House Street Disposal Site is a "facility" under Part 201. MCL 324.20114(1)(ii) imposes an obligation on liable parties who own a "facility" where contamination is present in excess of generic cleanup criteria (which is the case here) to provide notice to both the MDEQ and the owners of any property where hazardous substances are present within 30 days. See MCL 324.20114(1)(ii). Therefore, Wolverine has an obligation to provide the MDEQ and any owners of contamination where hazardous substances are present with the requisite notice.

Given Wolverine's "unconcerned" approach to environmental investigation and response activities to date, any enforcement efforts by the U.S. EPA and/or MDEQ should closely scrutinize all of Wolverine's due care obligations under Part 201 and CERCLA.

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VI. Strict Monitoring Is Needed.

Wolverine's long history of disregard for the public's health demonstrates that strict monitoring of Wolverine's investigation and clean-up activities is absolutely necessary. Although many examples exist, a few are worth noting:

- In 1966, as a result of a lawsuit over Wolverine's use of the House Street Disposal Site, Wolverine was ordered (as a result of a settlement) to "see that water supplies and/or lakes or other waters not owned by the company will not be contaminated by any use made of said dump." See *Wolverine v. Twp. of Plainfield*, Kent Count Cir. Ct. No. 2609, May 6, 1966 Judgment at ¶ 2.A.(11)(emphasis added), **Exhibit G**. Wolverine's promise induced Plainfield Township and surrounding neighbors (who intervened in the lawsuit) to accept the settlement. Yet, despite the promise and despite the order existing to this day, it is clear Wolverine made no effort to comply with the order.
- In 1999, 3M (the manufacturer of "Scotchgard," which contained the PFAS used by Wolverine) had a meeting with Wolverine for the purpose of explaining the potential harmful effects of PFAS in 1999. See 1/15/1999 Letter from 3M, **Exhibit H**. 3M expressly told Wolverine that exposure could occur from the disposal of Scotchgard. Wolverine apparently did nothing in response.
- When Wolverine finally tested residential wells for PFAS in April 2017, Wolverine tested only a select few properties around the House Street Disposal Site *in a direction that Wolverine's consultant doubted the groundwater flows*. Even after those residential wells tested positive for PFAS, Wolverine did not recommend testing the residential wells in the direction that groundwater flows. Fortunately, a federally-required testing of a United States Armory to the south of the dump revealed the contamination in other directions.
- When news broke in 2017 about the contamination, Wolverine lied to the public, stating that Wolverine first heard about PFAS in its manufacturing process in Fall 2016. Wolverine got caught red-handed when 3M then released the January 15, 1999 letter. See 11/28/2017 letter from 3M, **Exhibit I**.
- As explained above, Wolverine attempted to remove waste from the MDOT Site and Imperial Pine without adequately analyzing it. Wolverine's actions demonstrate that it simply did not care what other substances may have been leaching into the groundwater. Fortunately, we insisted our consultant be there, whose samples and results provided the EPA's cited basis in its Administrative Order for authority under CERCLA. Again, had someone not scrutinized Wolverine's behaviors, Wolverine may have been able to disregard the alarming amount of hazardous substances at the House Street Disposal Site.

In the end, our clients are encouraged that the EPA and MDEQ have initiated enforcement actions against Wolverine, but are concerned that passive oversight will allow Wolverine to continually cut corners. Wolverine cannot be trusted to protect the interests of the public at large, as demonstrated by Wolverine's systemic failure to do so in the past. Stringent


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enforcement by the EPA and MDEQ is necessary. We hope that both the EPA and MDEQ will consider our preliminary comments set forth in this letter.

Please feel free to contact me if we can be of any further assistance or if you would like to discuss any questions or comments you may have.

Very truly yours,

VARNUM

Aaron M. Phelps

AMP/sm
Enclosures

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